

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ABBY RIOS,

Plaintiff.

Case No. 2:11-cv-01592-KJD-GWF

ORDER

V.

WAL-MART STORES, INC.,

Defendant.

13 On September 18, 2019, the Court granted (#264) Plaintiff's Motion to Adjudicate
14 Attorney Lien. An evidentiary hearing was held on October 8, 2019 to determine the proper
15 amount of the lien. The lien is the amount of the agreed-upon fee or, if none has been agreed
16 upon, a reasonable amount for the services rendered "on account of the suit, claim, demand or
17 action." NRS 18.015(1). Here, the contingency fee agreement requires Rios to pay a reasonable
18 fee upon termination of Agwara.

Analysis

20 Agwara sought a lien amount of \$125,000.00 in attorneys' fees and costs of \$9,300.28.
21 Reasonable attorneys' fees are generally calculated using the traditional "lodestar" method. See,
22 *e.g.*, Camacho v. Bridgeport Fin'l, Inc., 523 F.3d 973, 978 (9th Cir. 2008). Under the lodestar
23 method, the Court determines a reasonable fee by multiplying "the number of hours reasonably
24 expended on the litigation" by "a reasonable hourly rate." Hensley v. Eckerhart, 461 U.S. 424,
25 433 (1983). The lodestar figure is presumptively reasonable. See Cunningham v. County of Los
26 Angeles, 879 F.2d 481, 488 (9th Cir. 1988).

27 The touchstone in determining the hours for which attorneys' fees should be calculated is
28 whether the expenditure of time was reasonable. See, e.g., Marrocco v. Hill, 291 F.R.D. 586, 588

1 (D. Nev. 2013). The Court “has a great deal of discretion in determining the reasonableness of
2 the fee and, as a general rule, [an appellate court] will defer to its determination ... regarding the
3 reasonableness of the hours claimed by the [movant].” Prison Legal News v. Schwarzenegger,
4 608 F.3d 446, 453 (9th Cir. 2010) (quoting Gates v. Deukmejian, 987 F.2d 1392, 1398 (9th Cir.
5 1992)). The reasonableness of hours expended depends on the specific circumstances of each
6 case. See Camacho, 523 F.3d at 978. In reviewing the hours claimed, the Court may exclude
7 hours related to overstaffing, duplication, and excessiveness, or that are otherwise unnecessary.
8 See, e.g., Hensley, 461 U.S. at 433; Cruz v. Alhambra School Dist., 601 F. Supp. 2d 1183, 1191
9 (C.D. Cal. 2009) (“the Court must eliminate from the lodestar time that was unreasonably,
10 unnecessarily, or inefficiently” spent).

11 Here, the calculation of the lodestar amount is made particularly difficult by the fact that
12 Agwara did not maintain any time-keeping records. He instructed his associates not to track time
13 spent on cases or clients. Thus, the approximately 319 hours submitted by Agwara as a
14 reasonable time spent on this case are his estimation of the time spent. The Court would be well
15 within its discretion to deny Agwara a fee due to his failure to comply with the Local Rules that
16 require motions seeking attorneys’ fees to be accompanied by itemization of time and description
17 of work performed. See Nationstar Mortg., LLC v. Desert Shores Cnty., 2017 WL 1788682 *3
18 (D. Nev. January 13, 2017); Local Rule 54-14 (b); Fed. R. Civ. Pr. 54. However, the Court
19 recognizes that Agwara did provide valuable service to his client that kept the case alive, though
20 it was different counsel that argued the procedural motions that re-opened discovery on damages,
21 prevailed at trial and again on appeal.

22 Therefore, in order to determine a reasonable number of hours claimed by the movant, in
23 absence of itemized records, the Court refers to the docket and testimony provided at the
24 evidentiary hearing to determine a reasonable number of hours spent in the prosecution of the
25 claims (discarding time spent on duplicative, excessive, unnecessary or incompetent work). The
26 Court awards fees for the hours noted in the following chart:

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1	Entry	Docket No.	Hours Awarded
2	Complaint (Notice of Removal)	1	8.0
3	Certificate of Interested Parties	5	1.0
4	Motion to Extend Discovery	12	1.0
5	Opposition to the Motion for Discovery	24/25	2.0
6	Sanctions / Counter-motion to Disqualify		
7	Defendant's Counsel		
8	Opposition to the Motion for Summary	28	6.0
9	Judgment		
10	Hearing on Motions 24/25	33	1.5
11	Pre-trial Order	48	4.0
12	Settlement Conference	58	4.0
13	Plaintiff's Motion in Limine and	59/70/71	4.0
14	Opposition to Defendant's		
15	Plaintiff's Emergency Motion to	63	2.0
16	Continue		
17	Opposition to Defendant's Motion for	87	2.0
18	Spoliation Sanctions		
19	Motion to Reopen Discovery	88	4.0
20	Deposition of Rosler		.25
21	Deposition of Cash		.25
22	Deposition of Grover		.25
23	Deposition of Rios		4.0
24	Deposition of Roa		1.25
25	Deposition of Wagner		1.50
26	Preparation and travel time		10.0
27		TOTAL HOURS	57.0
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1 Accordingly, the Court finds that the reasonable amount of time charged for hours actually
2 worked on the case to total fifty-seven (57) hours. See Nationstar Mortg., at *2 (D. Nev. January
3 13, 2017) (an attorney's withdrawal from a case does not justify non-payment for reasonable
4 hours actually worked).

5 Counsel seeks an award based on a billing rate of \$395.00 per hour. The party seeking an
6 award of attorneys' fees bears the burden of establishing the reasonableness of the hourly rates
7 requested. Cohen v. Gold, 2018 WL 1308945 *6 (D. Nev. March 12, 2018) (citing Camacho v.
8 Bridgeport Fin'l, Inc., 523 F.3d 973, 980 (9th Cir. 2008)). Here, Agwara has failed to meet his
9 burden. First, he justifies the billing rate based on his status as a senior partner of \$450.00 per
10 hour. However, he is unable to specify which hours he worked on the case. While the record
11 does justify some of the hours, he did not work on substantial portions of the case. For example,
12 the deposition of Plaintiff Rios was handled by attorney, Naomi Arin. Further, the record
13 establishes and Agwara admits that a now deceased associate, George Maglares, alone worked
14 on the case for a year such that when Maglares left the firm on eve of trial, Agwara was forced to
15 seek a continuance because he was unprepared to handle the trial.

16 Further, the generally accepted billing rate for associates in this district is \$250.00 per
17 hour. See Cohen, 2018 WL 1308945 at *7 (case law establishes that the prevailing hourly rates
18 in this district are \$250.00 for experienced associates) (citing Sinayan v. Luxury Suites Int'l,
19 LLC, 2016 WL 4394484 (D. Nev. Aug 17, 2016) (collecting cases)). Accordingly, given the
20 state of Agwara's records, a modified billing rate of \$300.00 per hour compensates for the
21 division of hours between Agwara and associates. Therefore, the Court awards attorneys' fees in
22 the amount of \$17,100.00. In addition, Agwara seeks costs in the amount of \$9,300.28. The
23 Court finds that Plaintiff has met his burden in establishing reasonable costs in the amount of
24 \$9,300.28.

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1 Conclusion

2 Accordingly, IT IS HEREBY ORDERED that Liborius Agwara's attorney's lien is
3 adjudicated in the amount of \$26,400.28.

4 Dated this 28th day of February, 2020.

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8 Kent J. Dawson
9 United States District Judge

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